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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 NATIONAL UNION FIRE INSURANCE
12 COMPANY OF PITTSBURGH, PA,

13 Plaintiff,

14 v.

15 DENNIS LUTGE, an individual; and
16 BROOKE CANTWELL, an individual,

17 Defendants.

No. 1:20-cv-1809-DAD-JLT

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND GRANTING
PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT

(Doc. No. 18, 20)

18 Plaintiff National Union Fire Insurance Company of Pittsburgh, PA, asserts in its
19 complaint that defendants Dennis Lutge and Brooke Cantwell made unauthorized purchases using
20 funds from their employer, Tehachapi Public Cemetery District. (Doc. No. 1 at 3.) In addition,
21 plaintiff contends Cantwell was paid for hours she did not work and received insurance benefits
22 to which she was not entitled as a part-time employee. (*Id.*) Plaintiff, which issued an insurance
23 policy to Tehachapi, seeks to hold the defendants liable for fraud, conversion, breach of fiduciary
24 duty, civil conspiracy, and unjust enrichment.

25 Plaintiff seeks the entry of default judgment against defendant Cantwell. (Doc. No. 18.)
26 The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B)
27 and Local Rule 302. On May 25, 2021, the assigned magistrate judge issued findings and
28 recommendations determining that the factors set forth by the Ninth Circuit in *Eitel v. McCool*,

1 782 F.2d 1470 (9th Cir. 1986) weighed in favor of the entry of default judgment. (Doc. No. 20 at
2 4-10.) Therefore, the magistrate judge recommended the motion for default judgment be granted.
3 In addition, the magistrate judge recommended damages be awarded in the amount of
4 \$263,888.00 and costs be awarded in the amount of \$275. (*Id.* at 12.)

5 The findings and recommendations were served on the parties and contained notice that
6 any objections thereto were to be filed within fourteen (14) days after service. (*Id.*) No
7 objections have been filed and the time in which to do so has now passed.

8 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a
9 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
10 findings and recommendations are supported by the record and proper analysis. However,
11 because plaintiff concedes defendant Lutge has already paid it \$6,250 (Doc. No. 18 at 10),
12 the undersigned concludes that plaintiff has requested \$257,656.00 in damages plus \$275.00 in
13 costs, as opposed to the \$263,888.00 damages award recommended by the findings and
14 recommendations,

15 Accordingly,

- 16 1. The findings and recommendations issued on May 25, 2021 (Doc. No. 20) are
17 adopted;
- 18 2. Plaintiff's motion for default judgment (Doc. No. 18) is granted;
- 19 3. Plaintiff's request for damages in the amount of \$257,656.00 is granted;
- 20 4. Plaintiff's request for costs in the amount of \$275.00 is granted; and
- 21 5. The Clerk of the Court is directed to close this case.

22 IT IS SO ORDERED.

23 Dated: **June 28, 2021**

24 
UNITED STATES DISTRICT JUDGE